

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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In the Matter of the Complaint of
XO Tennessee, Inc. Against
AT&T Communications of the South
Central States and
AT&T Corporation

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OFFICIAL FILE
EXECUTIVE SECRETARY

Docket No. 01-01072

COMPLAINT OF XO TENNESSEE, INC.

XO Tennessee, Inc. ("XO"), pursuant to Tennessee Code Annotated, Section 65-4-117, files this complaint with the Tennessee Regulatory Authority ("Authority") against AT&T Communications of the South Central States and its parent company AT&T Corporation (collectively "AT&T") for AT&T's refusal to pay lawfully incurred charges for intrastate access and intrastate 800 database query charges provided by XO to AT&T.

The intrastate switched access and 800 database query rates charged AT&T by XO are the lawful tariffed access rates of XO for intrastate services. AT&T's refusal to pay is unjust, unreasonable, and unlawful. Accordingly, XO seeks an order from the Authority ordering AT&T to remit immediately all charges past due and owing pursuant to XO's lawfully-filed intrastate switched access and 800 database query tariffs, together with all appropriate and lawful interest and penalties for past due accounts. In support of its request, XO states as follows.

THE PARTIES

1. XO is a facilities-based provider of integrated local exchange, exchange access, interexchange and packet-switched telecommunications services. XO's parent, XO Communications, Inc., has constructed and deployed fiber optic networks in markets located in 23 states that enable it to provide competitive local exchange services. In some of those markets, XO Communications and its affiliates compete directly with other competitive local exchange carriers ("CLECs") owned and operated by AT&T.

2. In Tennessee, XO (formerly known as NEXTLINK Tennessee, Inc.) operates as a competing local exchange carrier and interexchange carrier.

3. XO's designated contacts for questions concerning this Complaint are:

Henry Walker
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Nashville, TN 37219
(615) 252-2363

Dana Shaffer
Vice President
Regional Regulatory Counsel
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Nashville, TN 37201
(615) 777-7700

4. AT&T Corporation operates as a nondominant interexchange carrier throughout the United States. AT&T Corporation's affiliate, AT&T Communications of the South Central States, provides intrastate interexchange services in the state of Tennessee. AT&T's address is 1200 Peachtree Street, NE, Atlanta, Georgia 30309. AT&T Communications of the South Central States also provides CLEC services in Tennessee.

JURISDICTION

1. The Tennessee Regulatory Authority has jurisdiction over the parties and over the subject matter of XO's complaint under Tennessee Code Annotated, Section 65-4-104

and 65-4-106, which grant the Authority general supervisory and regulatory power jurisdiction and control over all public utilities. Pursuant to Tennessee Code Annotated, Section 65-1-213, the Authority has a duty to ensure that all laws of the state over which the Authority has jurisdiction are enforced and obeyed. Because XO's tariff was lawfully approved, that tariff has the force and effect of law. In addition, Tennessee Code Annotated, Section 65-4-117 gives the Authority the power to investigate, upon its own initiative or upon complaint in writing, any matter concerning a public utility.

THE FACTS

1. XO's filed tariffs contain the rates, terms, and conditions under which XO offers originating and terminating access service and 800 database query service. XO's tariffs, as amended from time to time, took effect without challenge or protest. These tariffs control the rights and liabilities of XO and its customers, including AT&T, that purchase communications service pursuant to these tariffs, including the rates applicable to those services.

2. AT&T has consistently taken originating and terminating intrastate access service and 800 database query service from XO since it commenced operations in Tennessee. AT&T has routinely and knowingly accepted intrastate access traffic routed to it by XO from end users presubscribed to AT&T, and routed intrastate interexchange traffic to XO for termination to end users of XO. AT&T accepted such traffic from XO, and routed such traffic to XO for termination, in accordance with the terms of XO's switched access tariffs on file with the Authority. In addition, AT&T has used XO's 800 database query service.

3. Pursuant to its tariffs, XO submits invoices to AT&T for originating and terminating intrastate access service and 800 database query charges. Although AT&T continues to use XO's intrastate access and 800 database query services, AT&T has discontinued paying for intrastate access and 800 database query services invoiced by XO. AT&T has never contended that it has not ordered or does not use XO's intrastate access and 800 database query services. AT&T has never indicated that it wishes to cancel its service with XO, nor has it taken any action to do so.

4. XO provided the requested services in good faith, as it is legally obligated to do. During the months since March 2001, XO has repeatedly demanded that AT&T pay for intrastate access and 800 database services that AT&T used, and AT&T has repeatedly refused to pay.

COUNTS

1. AT&T and its affiliates, which together constitute one of the three largest providers of long distance service in the United States, has waged a nationwide, self-help campaign against various competitive local exchange carriers by refusing to pay their lawfully-tariffed charges, even while it continues to use their services and facilities.¹

AT&T has relied on its large customer base to withhold funds owed to competitive new

¹ See, e.g., *MGC Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, File No. EAD-99-002, FCC 99-408 (Dec. 28, 1999) (the Federal Communications Commission ("FCC") found AT&T liable for its failure to pay for interstate access services provided by MGC, observing that "it appears that AT&T may have attempted to use the threat of termination of MGC's access service - or the withholding of payment for service that it continued to receive - as a means of exerting pressure on MGC in the parties' ongoing rate reductions."). See also *Complaint of XIT Telecommunications and Technology, Inc. Against AT&T Corporation*, Order, P.U.C. Docket No. 22385, SOAH Docket No. 473-00-2224 (Public Utility Commission of Texas, June 2001) (finding that AT&T had unlawfully refused to pay for intrastate access services provided by a CLEC).

entrants, like XO, in an attempt to coerce lower rates. In effect, XO is forced to choose between sending traffic to AT&T knowing it will not be paid or blocking such traffic, which would alienate XO's customers. In either case, AT&T's actions leave XO at risk of violating state or federal laws.²

2. AT&T has taken this action in direct contravention of XO's tariffs, which obligate AT&T to pay lawfully tariffed charges.³ By failing to pay the full amount invoices in XO's bills, AT&T is in breach of its obligations under the tariffs and in violation of the laws and regulations of the state of Tennessee.

3. Moreover, AT&T is aware that XO will be unable to compete effectively with AT&T's CLEC operations if XO must continue to provide uncompensated services to AT&T. It is XO's belief that AT&T is paying intrastate access charges to incumbent LECs in the state of Tennessee, even while it refuses to pay XO's lawfully tariffed rates. It is also XO's belief that AT&T does not withhold payment of switched access charges from AT&T LEC affiliates even when the rates of those affiliates equal or exceed those charged by XO. This puts AT&T in a position to curtail the revenue streams of its

² See, e.g., *MGC Communications Inc. v. AT&T Corp.*, Memorandum Opinion and Order, DA 99-1395 (Com. Car. Bur. rel. Jul. 16, 1999) ("any effort by MGC unilaterally to migrate its customers to a different IXC not only would have raised confusion among the carriers' shared customers, but also would have placed MGC at significant legal risk").

³ It has been well established since the earliest day of Tennessee utility regulation that rates filed and approved have the force and effect of law. See, e.g., *New River Lumber v. Tennessee Railway Company*, 238 SW 867 (1921). With respect to interstate services, the FCC has concluded that statutory and regulatory constraints prohibit IXCs from refusing requests for services from an access carrier with "presumptively reasonable" tariffed rates. *AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, Declaratory Ruling, FCC 01-313, ¶ 18 (Oct. 22, 2001). See also *id.*, ¶ 16, n. 29 (reaffirming that under federal law, the tariff filings of nondominant carriers are "presumptively lawful") and ¶ 19 ("IXCs remain under a continuing obligation to accept

competitors while continuing to fund its own CLEC operations. AT&T's discrimination against unaffiliated CLECs confers a significant advantage upon AT&T's own LEC affiliates.

4. Moreover, by favoring its affiliated CLEC in Tennessee by paying access rates charged by that CLEC while not paying access rates charged by unaffiliated CLECs, including XO, AT&T is acting contrary to Tennessee Code Annotated, Section 65-4-115, which provides that:

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement, which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service, which can reasonably be demanded and furnished when ordered by the authority.

RELIEF REQUESTED

1. In view of the foregoing, XO respectfully requests that the Authority:
 - a. Establish a prehearing conference and ordering the parties to attend and develop a proposed procedural schedule for consideration and approval by the Authority.
 - b. Issue an order requiring AT&T to pay XO all amounts past due and owing for intrastate access and 800 database query services provided by XO

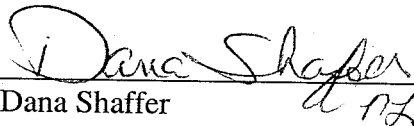
that [access] service at the tariffed rates until another rate has been established through negotiation or litigation.”)

under tariffs lawfully filed with the Authority, together with all appropriate and lawful penalties for past due accounts; and

- c. On a going forward basis, Direct AT&T and its affiliates to pay XO for originating and terminating intrastate access and 800 database query services at its lawfully tariffed rates and within the time period as provided in XO's tariffs.

2. XO further requests all other relief to which it may be entitled.

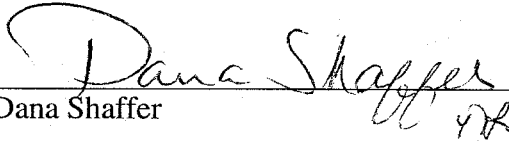
Respectfully submitted,

By: 
Dana Shaffer
XO Tennessee, Inc.
105 Molloy St.
Nashville, TN 37201
Counsel for XO Tennessee, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 4th day of December, 2001.

Claudia Davant, Esq.
AT&T Communications of the South Central States
1200 Peachtree Street, NE
Atlanta, GA 30309



Dana Shaffer